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## THE GOVERNOR-GENERAL OF THE PHILIPPINES UNDER SPAIN AND THE UNITED STATES

IN the organization of the office of chief executive of great colonial dependencies is involved a political problem of the first magnitude. The responsibilities of the government of an alien race, often permeated with discontent and difficult to control, require the deposit in the local executive of great and impressive powers, but there must be assurance that these powers will be exercised in subordination to the will of the home government and in accord with standards of humane and enlightened policy. Public opinion in a dependency cannot be relied upon for control and is always characterized by moods of hostility. Public opinion, and frequently official opinion, in the metropolitan country is usually ill informed and incapable of imagination. The history of certain of these great offices, like the viceroy of India, or the governor-general of Dutch India or French Indo-China, perfectly illustrates the dilemma. It exhibits both the evils of entrusting undisciplined authority to officers imperfectly responsible, and also the spectacle of rare capacity made impotent by a superior control that was distrustful, jealous, and incapable of allowing adequate discretion.

Of the several impressive offices of this character still existent in the modern world, not the least in importance and the oldest in point of history is under the sovereignty of the United States, and the recurring problem of its organization, which baffled Spanish political effort for more than three centuries, now occupies the attention of American statesmanship.

The office of governor and captain-general of the Philippines was created by royal cedula of King Philip II. in 1567, immediately upon receipt of news of the successful occupation of the archipelago, and was conferred upon the *adelantado* and conqueror of the islands, Don Miguel Lopez de Legazpi. For the space of two hundred years it underwent little development but continued to illustrate perhaps more clearly than any other similar position in the Spanish colonial empire the typical character and vicissitudes of the institution. Then toward the close of the eighteenth century it shared in those important administrative changes which in America are associated with the work of Galvez. It entered on a third phase of its history after the loss of the Spanish-American empire and from about 1840 down to 1897 was, together with the

whole body of colonial administration, the object of constant solicitude and modification. This period is most instructive because it exhibits a great office facing the modern difficulties of colonial government, and after decades of contest ending in failure to sustain the sovereignty of Spain.

Continued under American occupation, the governor-generalship of the Philippines exists to-day as one of the disturbing but great and magnetic positions upon which depend the efforts of the white race to control the political future of tropical peoples. It is proposed in this paper to view this office in outline in its several periods and offer some reflections based on a comparison of Spanish and American experience.

The office of Philippine governor was created on the model which had originated in Spain and been developed in the New World. Seventy-three years intervened between the first voyage of Columbus and the definite occupation of the Philippines, and in this period the Spaniards had had some exceptionally severe lessons and gained much hard experience in colonial empire. This American experience was behind the Philippine conquest and determined its character. The institutions whereby Spain for 250 years governed her vast empire were carried as a nearly completed system to the Philippines. A great body of law defining the powers and relations of colonial officers already existed and was put into effect in the new possession. Thus the Philippines were spared a repetition of the periods of extravagant waste of life and accompanying disorder that fill the early pages of the history of most Spanish-American colonies. The list of governors exhibits not a few who were weak and inept but no Ovando nor Pedrarias.

During the period of conquest and settlement of the Philippines America was relied on to supply most of the Philippine governors, and not a few had developed in those remarkable training schools of colonial officials, the audiencias of the New World. The *adelantado* Legazpi, a model of courage, prudence, and humane moderation, was appointed to lead the expedition that effected the conquest from the post of *escribano mayor* and *alcalde ordinario* of Mexico; Sande (1575-1580) was an *oidor* of the audiencia of New Spain, and Gonzalo Ronquillo (1580-1583) and Dr. de Vera (1584-1590), officials of the same government. Bravo de Acuña (1602-1606) had been governor of Cartagena, Hurtado de Corcuera (1635-1644) governor of Panama, Manrique de Lara (1653-1663) *castellano* of Acapulco, and Torre Campo (1721-1729) governor of Guatemala.

Another field of promotion to the post of Philippine governor was the army in Flanders. Between 1609 and 1678 at least six governors, Juan de Silva (1609-1616), Fajardo y Tenza (1615-1624), Niño de Tabora (1626-1632), Salcedo (1663-1668), a native of Brussels, Manuel de Leon (1669-1677), a hero of Lützen and Nördlingen, and Vargas Hurtado (1678-1684), were appointed from Spanish armies serving in the Low Countries. Several of these men were nobles or members of distinguished orders. To the intrepid and ambitious soldiers and lawyers of that day the Philippine appointment unquestionably appeared an opportunity for audacious service in the East and a stepping-stone to higher rewards in the great offices of the New World, but the vast distance, the hardships of the long voyage, the tropical disease that assailed so many, and the bitter trials of the office itself wore out these men, with rare exceptions, and hardly one returned. Few indeed like Manrique de Lara were able to endure a long term of service (in his case the unprecedented period of ten years), and the persecutions of a severe *residencia*, and return to Spain to die of old age in his native Malaga. To most the Philippine appointment was the end.

The selection of the governor was personally made by the king from a list of officers proposed by the Council of the Indies. When Niño de Tabora was appointed not less than ten names were proposed, including one man, de Vivero, who had served an interim appointment as governor at Manila and returned to the governorship of Panama.<sup>1</sup> To read the terse *dossiers* of these nominees is to see outlined in a few words the adventurous lives of the Spanish conquerors in the New World and the wide field of services presented by Spain's amazing empire.

The appointment was set for eight years but, in case the governor survived, it sometimes extended to nine or ten. The average however was low and drew frequent unfavorable comment, especially when contrasted with the long periods of service of the dignitaries of the Church.

During the latter part of the seventeenth and most of the eighteenth century, when Spanish national life sank after the exhausting efforts of a hundred years of stupendous conquest, emigration to the islands nearly ceased, commercial restrictions checked economic development, and torpor succeeded the intense energy of an earlier time. In this situation the governorship was repeatedly conferred upon the Archbishop of Manila or one of the other

<sup>1</sup> "Report of the council on the appointment of a governor of the Philippines", 1625, Blair and Robertson, *The Philippine Islands*, XXII. 27.

prelates. After the eighteenth century the governor of the Philippines was nearly always a military or a naval officer of high rank.

In the beginning, the Philippines were regarded as an outpost for further eastern conquests; the Spice Islands and Malacca, the coasts of Siam and Indo-China were all essayed by Spanish expeditions, and designs of conquest of Japan and China filled the feverish brains of some of these daring exiles. But the sparse population of the archipelago, less than a million natives and only a few hundred Spaniards, the insufficiency of revenues, and the enormous difficulties of Pacific transport eventually enforced a policy of economy and extreme simplicity of administration. The governor represented the all-embracing authority of the king. He was governor of the civil administration, appointed the provincial chiefs, or *alcaldes mayores*, and, except where these officers received royal appointments, the other administrative officials. As civil head he sent and received embassies from the countries of the East and made peace and war. As captain-general he commanded all the armed forces in the colony, equipped fleets to invade the Moluccas or repel the pirates of Mindanao, built or repaired the fortifications of Manila and the naval yard of Cavite, and built and despatched the "Acapulco Galleon", eventually the sole communication with Mexico and Spain. The perilous situation of the colony, the menace of China and Japan, the struggle for the Moluccas, the centuries of Malay piracy, and the incursions of the Dutch gave great prominence to the military responsibilities and the functions of the governor as captain-general. He had full responsibility for the revenues, nominated to *encomiendas* until these grants disappeared in the eighteenth century, and established the *estancos* or government monopolies. He also allotted the *boletas* or tickets entitling the holder to cargo space on the Acapulco galleon. As vice-patron and representative of the king, he nominated to church benefices and controlled the financial support of the missions. For the discharge of these numerous services he had relatively few assistants. A royal treasurer, an accountant, a factor, the fiscal of the audiencia, a *teniente del rey*, who commanded the military plaza of Manila, and the field-marshal and captains of his army were the usual officers. The audiencia, definitely established in 1595, served both as a supreme court with civil and criminal jurisdiction and as an administrative and legislative commission. Of this body the governor was president until 1844 and his relations to it form an interesting study.

The policy of Spain was to make the office of governor one of

impressive dignity. He was the personal representative of the king and, so far as the slender resources of Manila permitted, lived in state. The official ceremonies attending his arrival and induction into office were elaborately prescribed. A guard of halberdiers attended him when he walked abroad,<sup>2</sup> and a mounted escort when he rode. These formalities, however inconsistent with the actual resources of the position, were highly esteemed by the Spaniards. A complaint filed by the *audiencia* with the king against the governor, Tello de Guzman, in 1598, has mainly to do with the offense of attending a meeting of that body in a short, colored coat and a hat with plumes.<sup>3</sup>

While encouraging and abetting the heroic enterprises of her expatriated sons, Spain early sought to provide balances and restrictions to their overtopping ambitions. These attempted limitations can perhaps nowhere be better studied than in the history of the Philippines, where the remoteness of the colony and the difficulty of Spanish supervision occasioned situations of the most sensational character. Some of the practices used as checks by the Spanish government would not be approved by the more advanced experience of the present day, but they are at least characteristic of the thought of the period, which was singularly distrustful and counted no public servant too loyal or exalted to be watched and restrained.

In the first place, Spanish officialdom encouraged direct report on the policy and character of the governor from subordinate officials and from the ecclesiastical administration. From the foundation of the colony at Manila other royal officials than the governor wrote directly to the king. Of the first expedition to settle the Philippines, Legazpi, the treasurer Lavezaris, and the factor Mirandaola all wrote independently to Philip II. The fiscal Ayala in 1589 wrote expressing complaints both of civil and ecclesiastical administration. The *ayuntamiento* of Manila in 1601 registered its grievances against the *oidor* and lieutenant-governor, Dr. Antonio Morga. A letter of Bishop Santibañez of 1598 informs the king that Governor Tello de Guzman had called together all the honorable people, even to the master of camp, and all the captains, and while they stood bareheaded berated them worse than he would his cobbler: "You don't realize that I can have all your heads cut off, and you think that I don't know that you have written to the king against me." "Your majesty", says the bishop in another letter,

<sup>2</sup> The antique halberds of this guard, which was suppressed in 1868, were part of the military trophies of the American army after the capture of Manila. The writer saw a number of them then.

<sup>3</sup> "Report of the *audiencia* on the conduct of Tello", Blair and Robertson, *op. cit.*, X. 183.

"should not inquire into the particular vices of Don Francisco Tello, but should picture to yourself the universal idea of all vices, brought to the utmost degree and placed in a lawyer". "If one were to seek faithfully over all Spain for a man of most debauched conscience, even the vilest and most vicious, to come to this country and corrupt it with his example, there could not be found one more so than he."<sup>4</sup>

It does not appear that the Council of the Indies or the king ever followed the practice of acquainting the governor with such attacks as these upon his policy or his character, nor do they appear to have been moved thereby to any decisive action, but we must suppose that they had their effect in creating distrust at the Spanish court, undermining its confidence in the governor, and weakening the loyal support of his efforts. Modern administration follows the principle of requiring official correspondence between the government of a dependency and the home authorities to proceed within the cognizance of the chief executive of the dependency, and present-day standards of loyalty and of subordination forbid irresponsible criticism, but Spain proceeded upon the different principle of setting subordinates to watch their superiors, and trusted to jealousy, pique, and self-interest to expose the deficiencies or corrupt character of those set in authority.

The legitimate balance upon the powers of the governor was the *audiencia*. The *Audiencia* of Manila was created on the American model, and was the tenth to be established by the Spanish government in their organization of empire.<sup>5</sup> It was first erected in 1584 under the presidency of the governor, Dr. Santiago de Vera, but was suppressed largely for reasons of economy in 1590, and re-established in 1598 by a royal decree dated November 26, 1595. On the vacancy of the office of governor the *audiencia* regularly assumed the duties of the position, the direction of military affairs being confided to the *maestre de campo*, or more usually to one member of the *audiencia*.<sup>6</sup> It had the power to grant *encomiendas* of Indians if the governor neglected this duty. It reported annually on the operation of local government and was a board for the audit of accounts, and for the taking of the *residencia* of subordinate officials.<sup>7</sup> Sitting as a consultative chamber of (*sala de real*

<sup>4</sup> Blair and Robertson, *The Philippine Islands*, X. 147, 156.

<sup>5</sup> *Recopilación de Leyes de las Indias*, libro II., tit. xv, ley xi.

<sup>6</sup> *Recop.*, libro II., tit. xv, leyes lvii, lviii.

<sup>7</sup> A brief but clear account of the functions of the *audiencia* of the Philippines and its relations with the governor is given by the *oidor*, Dr. Antonio Morga, in his *Sucesos de las Islas Filipinas*, first published in Mexico City in 1609. Writing from personal knowledge, Morga states that the governor attended privately to all that related to war and government with the advice of the *audiencia* in difficult matters; that he tried the criminal offenses of regular, paid soldiers, but

*acuerdo*) it deliberated upon matters of government and administration and participated with the governor in the enactment of local ordinances. It actually discharged certain commissions such as the management of the praedial tithes, the public lands, temporalities, and the *fondos de Agaña*, which seem to have been funds for the support of the establishment in the Marianas Islands or the Ladrões.<sup>8</sup> It appears to have been usually in accord with the governor both in support of his general policy and in the interminable and disastrous disputes which arose between the governors and the ecclesiastical authorities.

It was the Church that constituted the real check upon the power of the governor of the Philippines. The conflicts which arose between the governors and the archbishops of Manila were never resolutely dealt with by the Spanish crown, nor were the causes of enmity settled. The result was an obvious impairment of authority which nearly brought the colony to ruin. The struggle became acute about the middle of the seventeenth century, under Governor Sebastian Hurtado de Corcuera. No Philippine governor of the seventeenth century more impresses the imagination than this active and valiant man, about whose character a tempest of argument has waged. He dealt the Moros of Mindanao the heaviest blow that these pirates were to receive until the middle of the nineteenth century, but his rule is also associated with the loss of Formosa and of the Portuguese colony of Macao. When relieved by his successor in 1644 he was subjected to bitter charges by his opponents in his *residencia*, and for five years was held a prisoner in the fortresses of Santiago and Cavite. "A strange turn of fortune!" exclaims a contemporary writer, the Dominican friar Navarrete, "Don Sebastian had been the most absolute and the most dreaded lord in the world." The conflict between priest and soldier long continued. Governor Diego de Salcedo in 1668 was made a prisoner by the Commissioner of the Inquisition and died at sea while being sent to Mexico for trial. Governor Vargas Hurtado (1678-1684) suffered excommunication, and after a *residencia* of four years died at sea on the way to Mexico. The troubles of Governor Bustamente with the archbishop and the religious orders led to his assassination in 1719.

that these had a right of appeal to the audiencia; that he sat with the audiencia for the trial of civil and criminal cases and with this body provided what was necessary for the administration of finances; that the audiencia each year audited the accounts of the royal officers and after balancing them sent them to the "Tribunal of Accounts at Mexico". (W. E. Retana's edition of the *Sucesos*, Madrid, 1909, pp. 222, 224.)

<sup>8</sup> J. de la Rosa, "La Administración Pública en Filipinas", *La Política de España en Filipinas*, III. 115.



The *residencia* was a peculiarly Spanish institution. It was the trial and audit of accounts of an official at the end of his term by his successor. It frequently occupied months and even years of time, and involved a retiring executive in great delay and expense, and not infrequently in heavy penalties. The case of Corcuera has already been referred to, and some of his successors were hardly more fortunate.

The Italian traveller Gemelli Careri, who visited the Philippines in 1697, thus recorded his impression of the proceeding:

This Grandeur and Power [of the governor] is somewhat eclips'd by a dreadful Trial the wicked People of *Manila* make their governors go through. . . . The Accusers have 60 Days allow'd them, after Proclamation made through the Province, to bring in their Complaints, and 30 Days to Prosecute before the Judge, who is generally the Successor in the Government by Special Commission from the King and his Supream Council of the *Indies*.

After citing the cases of Corcuera, Fajardo, and Manrique de Lara, the last of whom, after a life of extraordinary adventure ending with his *residencia* at Manila, regained his native land to die in orders, Gemelli records:

In short since the Islands were Conquer'd, no Governor has returned to *Spain* but he and one more; for all of them either break their Hearts at their Tryal or Dye with Hardship by the way. It is certain this Tryal is worth one hundred thousand Crowns to the new governor which he that goes off must have ready, to come off well in this dreadful Tryal.<sup>9</sup>

It can hardly be doubted that the prospect of this bitter experience awaiting a governor at the termination of his office undermined his courage and weakened his conduct of affairs.

Besides the ordeal of the *residencia* the government of the Philippines was occasionally subjected to the inspection of a *visitador*. In 1631 the *oidor* Rojas of the audiencia of Mexico was sent to the Philippines in this capacity and suspended the *oidores* of the Manila audiencia. The exact relation between the administration of the Philippines and that of Mexico and the degree of control exercised by the latter over the former are somewhat difficult to determine. Theoretically the Philippines, like the captaincies-general of Yucatan and Guatemala, were under the jurisdiction of the viceroy of New Spain. The viceroy, or sometimes the audiencia of Mexico, repeatedly designated the *ad interim* successor to a governor of the Philippines until the appointment could be settled by the king. During the suspension of the Manila audiencia cases

<sup>9</sup> Churchill, *Collection of Voyages*, IV. 411.

were regularly appealed to the audiencia at Mexico City. The Commissioner of the Inquisition in the Philippines was an agent of the Holy Office in Mexico. All communication for several centuries between the Philippines and Spain lay through the Acapulco galleon. Mexico was relied upon for financial and military support and for an annual subsidy or *situado*, such as was also furnished to the financially weak governments of Venezuela, Havana, or Yucatan. Yet the actual degree of oversight does not seem to have been great, nor to have had appreciable influence upon the conduct of Philippine affairs.

The Spanish system as above described was undeniably fatal to the initiative, independence, and vigor of her governors. Placed in a difficult situation, distant from the Spanish court by half the circumference of the globe, compelled to rely upon Mexico for economic support, the focus of jealousy and contention, balked by ecclesiastical rivals and civil associates, and conscious of the grim day of reckoning at the end of their terms, the governors of the Philippines during most of the eighteenth century sank in character, and their achievements were too futile to be recalled.

The task of reorganizing and reinvigorating the government of the Philippines began with the last third of the eighteenth century, and continued with fluctuations down to the end of 1898. The higher intelligence of the nation from time to time discerned the weaknesses of the organization and indicated remedies, but reforms were never carried through with completeness and the end was revolt and disaster. The history of these attempts to modernize the Spanish administration of the Philippines is most instructive, but only its main outlines can be indicated here.

The capture of Manila by the English in 1762 aroused the Spanish government to the appointment and support of governors of ability, among them Anda y Salazar and Basco y Vargas. The latter, who placed the finances of the Philippines upon an independent basis through the establishment of the tobacco monopoly, and who did something to encourage agriculture and industries, was also responsible for attempting in the administration of the Philippines that separation of governmental and financial administration which had been effected in the viceroyalties of Mexico and Peru. On recommendation of Basco there was issued the royal order of July 7, 1784, creating the Intendency of the Army and of Finance, and to this position was appointed an *oidor* of the audiencia, Carvajal. This official established in the islands five subordinate intendencies and submitted plans for the fiscal and agri-

cultural development of the islands. The new organization, however, was short-lived. In 1787 the superintendence of finance, by royal decree, devolved once more upon the governor and captain-general. The modification of the earlier unspecialized centralization of authority in the direction of segregating financial administration rested upon a sufficiently definite theory to commend itself to Spanish authority, and after a half-century of experiment the financial administration was reorganized as the *Intendencia de Hacienda*. The governor continued to be the "superior head" of this, as well as other branches, but the immediate direction was confided to the *intendente general*.<sup>10</sup>

A further specialization of 1861 deprived the governor-general of his judicial powers; at the same time the audiencia was divested of its administrative and consultative functions and became simply the supreme court for the archipelago.<sup>11</sup> With this change there was created a new body advisory to the governor, known as the Council of Administration (*Consejo de Administración*), made up of high officials, civil, military, and ecclesiastic. A minor advisory body was the Board of Authorities (*Junta de Autoridades*). The principle that the Spanish sought to apply here is one which has been widely used in the colonial administration of the French, the Dutch and the English, namely, to concentrate executive authority in a single person, but to subject the exercise of this authority to the expert advice of responsible associates. Expectations of the usefulness of this body in the Philippines do not seem, however, to have been realized, and at the time of the ending of its existence it was declared a useless organization.<sup>12</sup> Its last assembling took place in the city of Manila under the guns of Dewey's fleet, and amidst the general apprehension that prevailed on that occasion it appears to have rendered no particular service. Still further specialization took place with the organization of a general department of civil administration. The conception of this reform was to segregate from military affairs and from the determination of policy the execution of functions having to do with civil service and with the development of the islands, people, and resources. The *Dirección General de Administración Civil* was decreed as early as 1858<sup>13</sup> but actually established in 1874, and the position of director was occupied in the last decades of Spanish rule by a number of men

<sup>10</sup> The decree is given in San Pedro, *Legislación Ultramarina*, XIII. 10.

<sup>11</sup> Royal decree of July 4, 1861, San Pedro, *op. cit.*, VII. 38.

<sup>12</sup> See the testimony of Don Cayetano Arellano before the Philippine Commission in 1899. *Report of the Philippine Commission*, 1900, II. 24.

<sup>13</sup> Berriz, *Diccionario de la Administración de Filipinas, Anuario*, 1888, I. 624-643.

who made a distinct impression upon the well-being of the islands. It had two branches, *Gobierno* and *Fomento*, and embraced the bureaus (*inspecciones*) of mines, forests, public works, poor relief, sanitation, and public instruction. As advisory bodies to the chiefs of these bureaus there were formed a number of consultative boards on the principle above noted.

In case of death or absence, the governor-general was succeeded by the *Segundo Cabo*, a general next in command of the military forces and in case of the latter's disability and the absence of another army officer of general rank, a decree of 1862 provided that the government should be exercised by the naval officer in command of the Philippine station.<sup>14</sup>

With the awakening of new interest in dependencies observable in the last half-century of the Spanish period, and with the creation in 1863 of the *Ministerio de Ultramar* or Colonies,<sup>15</sup> initiative in legislation seems to have passed to the officialdom in Spain. This appears to have been increasingly so after the establishment of steamship connection by way of the Suez Canal and the connection of Manila by telegraph cable with the government at Madrid. Before this period the development of the Philippine administration seems to have been largely in the hands of the governors at Manila, subject to the approval of the government in Spain; thus the governorship of Claveria (1844-1849) was characterized by the initiation of many reforms, the establishment of new provincial governments, the bestowal of surnames upon the natives, the correction of the calendar, and the final suppression of piracy, and his proposals seem to have invariably found approval at Madrid. Probably no governor after Claveria made so original an impression upon the islands. What the later governors did effect, however, was to reflect the changes in the politics of Spain. The momentary triumph of liberal politics at Madrid meant encouragement to the aspiration of the natives of the Philippines, frequently to be followed by the adoption of a conservative policy and the appointment of a representative of reaction. Thus the period of advancement and reform from 1880 to 1888 represented by the "liberal" governors, Primo de Rivera, Jovellar, and Terrero, was followed by the reactionary rule of General Valeriano Weyler, 1888-1891, whose name is familiar to Americans through his disastrous government of Cuba, and who exemplified both the possibilities and the abuses of the office as it was in the last period of its existence.<sup>16</sup>

<sup>14</sup> San Pedro, *op. cit.*, I. 134.

<sup>15</sup> *Ibid.*, p. 185, for the royal decree of May 20, 1863.

<sup>16</sup> Retana, *Mando del General Weyler en Filipinas* (Madrid, 1896).

Neither in the Philippines nor in the Western Hemisphere was there ever a colonial legislature established under Spanish authority. This impairment of legislative responsibility in the colony had its undoubted effect in retarding and discouraging the progress of the government, and gave to colonial laws the effect of detachment from the actual conditions which they were meant to remedy. In spite of their august source and the solemnity of their promulgation, it is of interest to note how frequently they were disregarded. Morga, writing as early as 1597, states frankly that royal decrees sent to the Philippines by His Majesty are mostly suspended or not effectively observed.<sup>17</sup> Indeed the Spanish authorities at Madrid seemed to hesitate to give full and immediate effect to their determinations and to have promoted the development of a power in the local government to suspend or limit the action of a decree pending further correspondence.<sup>18</sup> This power of the *cumplase*, as it came to be known, was sometimes exercised in matters of great significance. Two "titles" of the Civil Code promulgated for the Philippines in 1889 was suspended, and the greater part of the Civil Marriage Act of 1870 suppressed by the governor-general. This has left the Philippines without any law of divorce, except as contained in *Las Partidas*.<sup>19</sup> The radical decree of Moret transforming the Dominican University of Santo Tomas into a government institution, was entirely withheld from publication by the governor-general and never went into force. The reform law of local government, the "Maura Decree", was made effective only in certain provinces and had hardly become operative when the Spanish system fell before the American conquest of the islands.<sup>20</sup>

The city of Manila was captured by the American expeditionary forces on August 13, 1898, and on the following day terms of capitulation were signed. From this date American government in the Philippines begins. General Wesley Merritt, commanding the American army, issued a proclamation announcing the establishment of military rule and assuring the Filipinos of protection and guaranties. It was published in accordance with instructions of the President which the commanding general brought.<sup>21</sup> General Arthur McArthur was appointed "provost-marshal-general and civil governor of Manila", and other officers were detailed to necessary administrative positions.

<sup>17</sup> See "Report of Conditions", Blair and Robertson, X. 81.

<sup>18</sup> This discretion was recognized very early by the laws of the Indies and was reaffirmed as late as 1876. See the *real orden* given in Berriz, *Diccionario, Anuario*, 1888, II. 95.

<sup>19</sup> See Benedicto v. de la Rama, 3 *Philippine Reports* 34.

<sup>20</sup> See LeRoy, *Americans in the Philippines*, I. 43.

<sup>21</sup> *Senate Document No. 208*, p. 85, Report of General Otis for 1899, p. 17.

The office of military governor covers the period August 14, 1898, to July 4, 1901. It was filled by the following officers of the United States army: Major-General Wesley Merritt, for the brief period August 14–August 29, 1898, Major-General E. S. Otis, August 29, 1898, to May 5, 1900, and Major-General Arthur McArthur, May 5, 1900, to July 4, 1901. The powers exercised by these military governors were very extensive and had an important influence upon the subsequent government of the archipelago. Acting under authority from the President of the United States and in the absence of Congressional legislation, the military governors exercised a most liberal legislative power. By proclamation and by general orders they continued in operation the municipal law that had prevailed under the Spanish government, re-established a system of courts, including provost-courts and the supreme court or *audiencia*, and for the trial of criminal offenses subsequently established a system of military commissions.<sup>22</sup> Where the Spanish law was believed to need correction it was unhesitatingly reformed. An entirely new code of criminal procedure, introducing into the jurisprudence of the islands the English principles of search warrants and the writ of habeas corpus, was promulgated by General Order No. 58, April 23, 1900, and is still the law of criminal procedure for the archipelago.<sup>23</sup> The law of civil marriage, which had long been a question of intense political and ecclesiastical controversy, was similarly promulgated.<sup>24</sup> Under military supervision municipal governments were set up and first one and subsequently another more elaborate municipal code was decreed. Military authority put into prompt operation provisional tariff laws and immigration regulations, which excluded the Chinese from entrance into the islands.

It was quite in keeping with the past powers of the position and with the policy long followed by the Spanish governors of Manila that General Otis should have commissioned a general officer to proceed to the Sulu archipelago and negotiate with the Sultan of Sulu a treaty of peace and protection. This document, which was secured with difficulty and misapprehension on both sides, followed the traditional lines of Spanish policy in handling this semi-independent Malay power. One article of the treaty however, that recognized slavery in the Sulu archipelago, was disapproved by the President of the United States. Following closely along the lines of traditional Spanish authority also was the power exercised by the military governor to expel or exile undesirable persons. This power was

<sup>22</sup> *Report of Major-General McArthur*, 1901, II. 42, 43.

<sup>23</sup> Printed in the *Public Laws passed by the Philippine Commission*, I. 1082.

<sup>24</sup> General Order No. 68, December, 1899, amended by General Order No. 70, 1900, printed in *Public Laws passed by the Philippine Commission*, I. 1078 ff.

used against Americans as well as aliens, but perhaps the case that attracted most attention was that of the exile and confinement on the island of Guam of thirty-nine Filipino "Irreconcilables", including the leading Filipino revolutionist Apolinario Mabini. Was it also the tradition of the *cumplase* which induced General Otis to omit certain provisions and modify others of President McKinley's notable proclamation of American sovereignty cabled to Manila at the end of December, 1898?<sup>25</sup>

On the administrative side the government as finally constituted by American military and civil authorities shows even more definitely the influence of the Spanish institutions and traditions that had preceded it. Except in the single case of the presidency of the United States American prejudice has been strong against conferring a centralized administrative control upon a single executive head. The American state governor, while he has risen in recent years to a position of great political importance, is in no case the executive head of state administration, which is distributed among state officers having a similar tenure with the governor or confided to commissions and boards only partially under his control. The same disposition has manifested itself in the governments for such territories, as Hawaii and Alaska. In neither of these is the governor of the territory the centre of the administration and the recognized avenue of communication between all departments of the federal and local governments. Such a diffusion of responsibility was happily prevented in the Philippines, first we may believe by the abiding influence of the office of governor-general under Spain, and in the second place by the period of military government now being described. As branches of civil administration were recreated during the period of military governorship these offices were not subordinated to departments at Washington, but were made responsible to the military governor.

The possession of captured funds and property occasioned prompt action with respect to those branches of Spanish administration which had been embraced in the *Intendencia General de Hacienda*. By General Order No. 5, September 17, 1898, the office of *intendente general* was suspended. The duties had already been separated into several departments: the treasury, the department of audits (General Order No. 3, 1898), the department of customs

<sup>25</sup> General Otis omitted entirely from the proclamation the statement of the right of the United States to the archipelago both by conquest and cession, and the intention of the government to at once extend its authority. Other clauses were expanded and to certain assurances from Washington he added his own. (See *Senate Document No. 331*, pp. 776-778; and General Otis's *Report*, 1899, opposite p. 359. See also the account in LeRoy, *Americans in the Philippines*, I. 401 and note.)

(August 20, 1898), and a department of internal revenue (August 21, 1898). Later those branches of administration which had been under the *Dirección General de Administración Civil* were taken up and their work revived. Public instruction in the city of Manila was committed to the oversight of a chaplain of one of the army regiments and later an army officer was detailed for the entire archipelago. Public health was entrusted to the medical corps of the army. In March, 1900 (General Order No. 31), the "Mining Bureau" restored the *Inspección de Minas* and inherited its collections and laboratory, and on April 14 of the same year the "Forestry Bureau" took up the forestry work of the former *Inspección General de Montes*. The organization of these offices as well as others which followed, under legislation of the Philippine Commission, took on a bureaucratic character, and thus from the beginning Philippine administration in American hands was unified, centralized, and made responsible to the chief executive of the archipelago.

Superficial critics and observers of the Philippine government have on a few occasions advocated the placing of one or another field of Philippine administration, as for example education, under the direction of the corresponding bureau of the United States federal service. Fortunately such suggestions have received no encouragement. Both American and European experience fully justify the course which Philippine administration has taken. The French experimented for years under the influence of "assimilation" ideas with an attempt to administer Algeria through extensions, to their African possession, of the administrative work of the several ministries at Paris. During this period, which extended from 1881 to 1896, local officials in the several departments reported not to the governor-general at Algiers, but to their respective ministries of the national government. This system of *services rattachés* gave such unsatisfactory results that a senatorial commission under the chairmanship of M. Jules Ferry reported in 1892 in favor of its abandonment. The policy of centralization under the governor-general was inaugurated with generally excellent results.<sup>28</sup> Alaska is a present example of a dependency where administrative authority instead of being concentrated in the territorial governor is distributed among numerous local representatives of services not united, who report to their distant heads at Washington. The unanimous voice of those qualified to judge of the workings of this decentralized system testifies to its disadvantages.

<sup>28</sup> Girault, *Principes de Colonisation et de Législation Coloniale* (1904), II. 388, 389.



On September 1, 1900, the Philippine Commission, composed of Hon. William H. Taft of Ohio, Professor Dean C. Worcester of Michigan, Hon. Luke E. Wright of Tennessee, Hon. Henry C. Ide of Vermont, and Professor Bernard Moses of California, entered upon its official responsibilities in the Philippines. Its powers were defined in the President's instructions to the commission transmitted through the Secretary of War under date of April 7, 1900.<sup>27</sup> Its general mandate was to "continue and perfect the work of organizing and establishing civil government already commenced by the military authorities". On the first day of September that part of the power of government in the Philippine Islands which was of a legislative nature was to be transferred from the military governor to the commission. This was specifically described as including the powers of taxation and appropriation of public funds, establishment of an educational system, of a civil service, of courts and municipal and departmental governments. It was further provided that the commission should have the power to appoint officers "under the judicial, educational, and civil service systems and in the municipal and departmental governments as shall be provided for".

It seems that the original intention of the President of the United States in appointing the Philippine Commission was to create a plural executive. The instructions read: "The commissioners . . . will meet and act as a board, and the Hon. William H. Taft is designated as president of the board." Power and responsibility obviously were collegiate and not individual. The president of the board was clearly only a presiding officer. However, as the Philippine insurrection drew to a close in the spring of 1901 and the improvement in the military condition of the archipelago warranted the establishment of a complete civil government, and the substitution for the office of military governor of one of a civil character, the plan for a collegiate executive was changed, and on June 21 the Secretary of War issued to the president of the commission an appointment as civil governor of the Philippine Islands, with the power to "exercise the executive authority in all civil affairs in the government of the Philippine Islands heretofore exercised in such affairs by the military governor of the Philippines". The appointment provided that "the power to appoint civil officers, heretofore vested in the Philippine Commission, or in the military governor, will be exercised by the civil governor with the advice and consent of the Commission". The military governor by the same order was relieved from the performance of civil duties,

<sup>27</sup> Printed in *Public Laws passed by the Philippine Commission*, I. xliii ff.

although his authority was to continue in districts where insurrection still continued or public order was not sufficiently restored. Under date of October 29, 1901, President Roosevelt appointed Mr. Luke E. Wright "vice-governor" with authority to act in the absence or incapacity of the civil governor.

The tendency of "government by commission" is to work away from the principle of collegiate responsibility, with which commission government begins, and commit specific responsibilities to individual members. As a consequence, unless by a rigid practice all important actions of individual members are reviewed and approved in commission the principle of joint responsibility is impaired. This was the development which the Philippine Commission eventually underwent. Acting under instructions from the Secretary of War issued on September 6, 1901, the commission enacted Act No. 222, providing for the organization of four departments: Interior, Commerce and Police, Finance and Justice, and Public Instruction, to the head of which departments the President, through the Secretary of War, appointed the four original colleagues of Mr. Taft. Section 5 of this act provides that the secretaries shall exercise the executive control conferred upon them under the general supervision of the civil governor, and that the executive control of the central government over provincial and municipal governments and the civil service shall be exercised directly by the civil governor through an executive secretary.

It is difficult to assert definitely how the principle of collegiate responsibility assumed when the Philippine Commission was created has worked out. The other members of the Philippine Commission, now consisting of nine members altogether, are not mere adjutants or cabinet secretaries of the governor-general. They, like himself, are appointees of the President of the United States. They may outrank him in length of service and experience, and may and frequently have differed from him on matters of policy. Their oversight of the branches of administration committed to them and of the bureaus in which this administration is organized, is to a large degree independent of the governor-general.<sup>28</sup> The governor-general, in the absence of a secretary, however, may assume the direction of his department, and on certain branches of the administration, as for instance constabulary and the preservation of public order, the policy of the governor-general has usually been decisive.

<sup>28</sup> By the rules of the commission, the governor-general and each secretary is a standing committee of one on all matters pertaining to the particular department which each represents. *Commission Journal, First Philippine Legislature, inaugural session*, p. 71, and *second session*, p. 79.

He possesses the power to proclaim martial law, suspend the ordinary civil rights granted by the Philippine Bill and even to concentrate the population, but he must exercise these extraordinary powers with the approval of the Philippine Commission. He has, moreover, the right to inspect and even personally correct any branch of administration whatever. The custom followed by all of the chief executives of making frequent trips through the provinces and by personal observation satisfying themselves as to the workings of insular and provincial administration has naturally led to the governor-general's taking cognizance of the working of all departments of government. Furthermore he may direct the dismissal of any official except a justice of the supreme court, a Philippine commissioner, or the insular auditor and this great disciplinary power makes his authority respected by all elements of administration. Furthermore, while the appointments of subordinate officials are regularly approved by the heads of departments, the directors of bureaus and the assistant directors are made by the governor-general. Good policy recommends consultation between him and the head of a department concerned and this consultation is usually had, but there have been undoubted instances of conflict of desire, and in these cases the will of the governor-general appears to have prevailed. Furthermore the civil service regulations are promulgated by the governor-general and his power over these rules and their operation appears to be complete. Thus it is doubtful if the legal relation existing between him and the heads of the departments is a proper one. The survival of collegiate responsibility is of questionable advantage. The principle recognized in other colonial governments of making the governor-general alone responsible for executive policy and limiting the function of his colleagues to that of an advisory council possesses undoubted advantages. Dissensions between members of the commission which the governor-general was powerless to correct or override and which could only be settled at Washington by what is necessarily a slow process have undoubtedly embarrassed the governor-general in the fulfillment of his responsibility and have in a considerable degree been responsible for a decline in the standing and effectiveness of the commission itself.<sup>29</sup>

By the "Philippine Bill" approved July 1, 1902, Congress approved, ratified, and confirmed the actions of the President of the United States in creating the Philippine Commission and offices of civil governor and vice-governor and the secretaries of departments,

<sup>29</sup> See *Congressional Record*, XLIX. 3089.

and provided that laws of the Philippine Commission up to that time enacted "by authority of the President of the United States" should thereafter read "by authority of the United States".<sup>30</sup>

The above legislation comprises the principal acts establishing the office of chief executive in the Philippines and defining its powers. These powers have however been further amplified in two ways: by acts of the Philippine Commission and of the Philippine legislature and by the assumption of certain powers as inherent in or traditional to the office of Philippine governor.<sup>31</sup>

Among the powers of the governor-general which have been developed by action of the legislative authority is a very considerable "ordinance power". The European practice of confining a statute to a bare declaration of principles or policy and authorizing the development of details by "Orders in Council" or *décrets* of the executive is so little understood in America that where such a practice arises under an American government it deserves attention. A statute of an American legislature too frequently aims to cover every minor detail and anticipate every situation that may arise in the administration of the law. The rigidity thus imposed occasions constant amendment by subsequent legislatures.

The absence of any clear conception of "ordinance power" in the minds of the Philippine Commission led to their expressing the legislative will in minute detail. The result is that the bulk of the acts—they amount to exactly 1800—passed by the commission during the period of its sole legislative authority, from 1900 to 1907, are not laws or *lois* in the French sense, but minor amplifications, suspensions, and administrative adjustments properly forming the field of executive ordinances or decrees.

Nevertheless the very experience of the commission in repealing and amending its own work led it to gradually entrust certain legis-

<sup>30</sup> All the steps taken for the pacification of the Philippines and the organization thereof of government were taken under authority of the President and by virtue of his constitutional powers as commander-in-chief of the army. Congress gave no sanction to the President's work until the Philippine Bill noted above, although on March 2, 1901, it did recognize American possession by a section of the army appropriation bill, which ratified the customs law as enacted by the Philippine Commission and added a revenue law granting refunds to the Philippine government of customs collected on American imports from the Philippines. This law of Congress further provided that no person in the Philippine Islands should be convicted of treason "unless on the testimony of two witnesses to the same overt act or on confession in open court". On April 29, 1902, shortly before the enactment of the Philippine Bill, an act was passed applying the Chinese immigration laws to the archipelago.

<sup>31</sup> The title of civil governor, created in distinction to that of military governor, was that held by Mr. Taft. After his retirement from the Philippines and appointment as Secretary of War he secured for his successor the adoption by Congress of the title "governor-general", thereby reviving the high designation used during the last period of Spanish rule and placing the office on a parity of dignity with that of other colonial empires of first importance.

lative powers to the governor-general. This process was augmented by the inauguration of the Philippine assembly. As the period of its exclusive legislative authority drew to a close the commission labored diligently and with obvious purpose to bring the body of Philippine laws to a state which would not require further enactments, if legislation proved impossible with the setting up of a concurrent law-making chamber. A number of acts conferred powers on the governor-general in explicit expectation that the legislative power would thereafter be exercised less freely. For example the preamble to Act 1748 recites that whereas changes in the boundaries and capital seats of provinces may be made necessary by new routes of communication and other economic development and "Whereas the Legislature will not, in all probability, be in session more than ninety days per annum; and Whereas it is desirable that there may be provided by law an expeditious method by which such changes may be made", it is enacted that whenever in the judgment of the governor-general the public welfare requires, he may by executive order change the boundaries or subdivide or merge any province, sub-province, municipality, township, or administrative jurisdiction, and in case new offices are made necessary by subdivision, create such offices and fill them either by appointment or by election. Action under the powers of this act has been constant. Through its exercise hundreds of towns once deprived of their autonomy have been restored to their earlier status.<sup>32</sup>

An earlier act of the same character (No. 1701) authorized the governor-general, in the interests of economy, to consolidate the office of provincial fiscal for two or more provinces, and this power has also been exercised repeatedly.

Another remarkable power exercised for some years was conferred by a clause in a general appropriation bill authorizing the governor-general to combine any two or more positions and from the united salaries to form a new position of higher grade, and authorizing the appointment of two or more persons for the salary provided for a single position.<sup>33</sup> These powers were exercised by Governor-General Forbes in such a manner as to arouse the opposition of the assembly and with the passage of the first appropriation bill under Governor-General Harrison such action was made illegal.<sup>34</sup> It is doubtful, from the scientific standpoint, whether a power to recast budgetary provisions should ever have been conferred. In a

<sup>32</sup> See *Executive Orders and Proclamations* (Manila, 1909, 1910, 1911, 1912, 1913, 1914).

<sup>33</sup> Act 1679, sect. 3.

<sup>34</sup> Act 2319, sects. 2 to 6.

representative government which, on the legislative side, that of the Philippines is, the power to determine the number and grade of offices and the appropriations for specific ends is a legislative function.<sup>35</sup>

Acts of the commission have frequently left to executive authority the determination of the date when they should become operative. For years the land tax was difficult to collect and the continuous petitioning of provincial boards for legislative relief from the payment of this tax was finally settled by conferring upon the governor-general the power to grant such suspension (Act 1713).

Prior to the inauguration of the first session of the Philippine assembly, the ordering and arrangement of the budget for submission to the legislative body was under the governor-general's immediate control, as this work was done by the executive secretary. There can be little difference of opinion that this is the scientific and proper manner for budget submission. American practice, the faults of which are becoming obvious to the public, has however confided this task to legislative committees. It was particularly unfortunate that this tradition should have been so fixed in the minds of the members of the Philippine Commission as to induce them at once to relinquish this properly executive function to a committee of the assembly. The appropriation bill passed by the first legislature was indeed better than might have been anticipated, but it fell short of what an appropriation bill, properly considered from the standpoint of government needs, should be. Owing to the inability thereafter of commission and assembly to agree upon another appropriation it remained the regular budget during the entire administration of Governor-General Forbes, 1909 to 1913.<sup>36</sup>

The governor-general possesses very ample powers of granting pardons and paroles. The authority seems to be descended from that exercised by the military governor. Neither Congress nor the Philippine Commission ever directly bestowed it. On June 2, 1902, a general amnesty was extended to political prisoners in the Philippines by the President. Ordinary criminal offenders were not included but the President directed that "special application may be made by those exempted from the amnesty to the proper authority

<sup>35</sup> The action of the governor-general in this matter was the cause of a serious dispute between him and one of the commissioners. See *Congressional Record*, XLIX, 3105-3107.

<sup>36</sup> The Philippine Bill providing for the assembly required that in case of failure to pass an appropriation bill for a new budget period the former budget should continue in force with identical appropriations. This device, which seems to have been borrowed from the constitution of Japan, and which has been extended also to the government of Porto Rico, prevents the assembly from coercing the commission by the historic method of refusal to "grant supply".

for pardon". This "proper authority" is conceived to be the governor-general. The power of pardon has been liberally used by all governors-general, sometimes upon the recommendation of a board of pardons appointed by the executive to review records, and otherwise upon examination of applications by the governor-general himself.

Under conditions that exist in the Philippines the pardoning power is one of immense delicacy and political importance. Its exercise is surrounded with difficulties. Among notable cases have been the decision of Governor-General Smith in the application for pardon of the "cabecillas" Sakay, Montalon, and de Vega, who, after surrender, were condemned to death and finally executed, and the recent case of General Noriel. Pardon having been refused for this man, application was made directly to President Wilson, who granted a stay. Whereupon, according to reliable reports, Governor-General Harrison tendered his resignation. The interposition of the President was then withdrawn and the execution of General Noriel followed on the day fixed. Legislation has twice extended the scope of the pardoning power by authorizing conditional pardons and paroles (Acts 1524 and 1561).<sup>37</sup>

The power of exile and deportation once exercised by the governor-general under Spain and by the military governor, is hardly to be so easily explained and indeed seems to be irreconcilable with the constitutional system extended to the Philippines. Yet without doubt the governor-general has this power at least as respects aliens, including not merely aliens seeking admission who may, without judicial review of their acts, be expelled by immigration authorities, but also aliens long resident in the Philippines. In 1910 certain Chinese, twelve in number, designated by the Chinese consul-general as persons prejudicial to the good order of the Chinese community, were arrested and conveyed to China by order of the governor-general or at least under his authority. One had been for years a resident in the islands and had children in the public schools. Subsequently several of the number returned and sought protection by a writ of injunction to police and constabulary authorities and also to the governor-general. A suit for damages against Governor-General Forbes was also filed. The supreme court of the Philippines, to which the cases were appealed, upheld the power of the governor-general to deport obnoxious aliens as a power

<sup>37</sup> The Municipal Board of Manila for a long time followed the practice of pardoning offenders convicted of violations of municipal ordinances without other warrant for such action than that such power was exercised under military rule by the provost-marshal-general.

inherent in the executive without specific legislative grant.<sup>38</sup> Meanwhile the Philippine legislature passed an act defining "due process of law" in such cases to be a hearing before the governor-general or his authorized representative, and providing further that the act should not be construed to authorize the "extrañamiento, destierro, deportation or other form of expulsion from the islands of Filipinos". (Act 2113.)

This case raises the general question of the power of courts to review the acts of administrative officers. In the United States this is the recognized procedure. It is well settled that the acts of the President of the United States are not judicially reviewable, nor will the ordinary writs lie against him, but this does not apply to his cabinet officers nor have the courts always applied this exemption to the governor of a state. We have seen that the Manila court directed a writ of injunction to the governor-general. But in the main the action of courts for reviewing administrative acts, for determining conflicts of jurisdiction, or for interpreting administrative powers, has been extremely sparse. In place of judicial action the commission has existed to adjust, or determine by executive instruction or new legislation, any conflict of powers, and to redress by direct action any abusive or unwise conduct of a subordinate officer. Aggrieved persons have found this method of redress so advantageous that there has existed practically no inducement to appeal to the courts. The commission has in fact acted in certain cases almost as an "administrative court" in the Continental sense. But the informality of its proceedings and the absence of record have delayed the growth of anything like a body of "administrative law". The situation is one to suggest the establishment under the governor-general of a superior administrative court in the proper sense to hear cases and recommend action in a large class of responsibilities in respect to which the governor-general has been entrusted with an administrative-judicial power. These cases include review of disputed elections; charges of malfeasance and removal from office; disqualification from holding public office; decisions on appeal from provincial boards on the legality of municipal ordinances; the reservation of public lands; the fixing of penal stations; and the determination of responsibility for loss of property by officials, with consequent deductions of salary. Such cases as these, and many others which are within the governor-general's competence, and which are frequently decided on merely clerical

<sup>38</sup> *Forbes et al. v. Tiaco et al.*, 16 *Philippine Reports* 534. This decision on somewhat different grounds has been upheld by the United States Supreme Court. *Tiaco v. Forbes*, 228 U. S. 549.



advice, are quasi-judicial in character and could presumably be settled with greater wisdom if action were taken under the advice of a body or court composed of men highly trained in both administration and law.

To return finally to the dilemma with which this paper opened, there seems to be no escape in the government of such a dependency as the Philippines from entrusting great powers to a single man, and granting him a confidence which cannot easily be weakened by detraction. The practical restraints on such a position seem to be only two: an informed public opinion and watchful interest on the part of a considerable element in the sovereign nation—such attention, for example, as the Dutch people give to their immense empire of Netherlands-India—and, secondly, the restraint and patience that is produced in a chief executive by a long service in similar capacities. In the government of colonies nothing can take the place of this experience. Colonial affairs and administration differ in so many important respects from domestic politics, that experience in the latter is no guaranty of success in the former. Every country, except our own, has come to the policy of making training and experience the indispensable prerequisites for high executive discretion in colonial government. The history of the Philippines under both Spain and America is sufficient to demonstrate them indispensable to the office of the governor-general.

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